

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HELENA J. HACKLEY
SHERLOCK D. HACKLEY

Claim No CU-2335

Decision No. CU -6168

Under the International Claims Settlement
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on April 21, 1971.
Oral hearing requested. Cancelled.

Hearing on the record held October 14, 1971.

FINAL DECISION

On April 21, 1971 the Commission issued a Proposed Decision denying this claim for failure of proof. The claim was based on the loss of an interest in certain real and personal property including stock interests in a number of Cuban corporations.

Claimant HELENA J. HACKLEY, objected to the Proposed Decision and thereafter submitted additional evidence and information in support of this claim.

Upon consideration of the new evidence in the light of the entire record including a copy of the deed to the property at No. 252 B Street, Vedado purchased by the father of HELENA J. HACKLEY on February 14, 1923 for 77,500 pesos, a copy of a deed of construction dated June 16, 1930 which describes the land as measuring 2,400 square meters and the house as measuring 1,145 square meters, and other documents the Commission now finds that the father of claimant HELENA J. HACKLEY owned one-half the improved realty at No. 252 B Street, Vedado and the contents of the house, and that claimant, HELENA J. HACKLEY, inherited an interest in this real and personal property upon his death on April 3, 1961. Pursuant to the will of claimant's father

and to the Cuban laws of descent and distribution, the Commission finds that claimant, HELENA J. HACKLEY and her sister each inherited a one-sixth interest in the whole property outright, that 1/6 was subject to a life estate in this matter, and they each inherited 1/2 of the remainder interest in the portion so encumbered.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who had left the country.

The Commission finds, in the absence of evidence to the contrary, that the subject improved real property was taken by the Government of Cuba on December 6, 1961 pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966]). The Commission further finds that the personalty in the residence was taken at the same time.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

Land

The record includes an appraisal prepared by the Havana representative of The Royal Bank of Canada on July 16, 1964. His appraisal is based on the value of the land itself for the year 1958, as though nothing had been built on the land. On this basis he values the land at \$70 per square meter or \$198,905 for the 2,841.50 square meters. Claimant states that she had also been advised by an appraiser for several American banks and insurance companies that the value of the land was about \$50 per square meter. She states that the first parcel of land measuring 2,500 square meters was purchased in 1923 for \$77,500, or \$31 per square meter; and that the second parcel measuring 341.5 square meters was purchased on April 27, 1937 for \$15,000, or \$43.92 per square meter.

Based upon the entire record the Commission finds that the value of land alone was \$142,075.00 on the date of loss.

Residence

The record includes a description of the improved realty as a two-story house having about 35 rooms with attic, a two-story garage joined to the house and a one-story gateman's house at the entrance. The main residence is described as being constructed of brick walls, plaster, stucco, and re-inforced concrete; with marble, terrazo and tile floors, and surrounded by an iron fence about 12 feet high. Claimant, HELENA J. HACKLEY states that the construction cost was \$164,899.51. She has submitted a letter dated September 30, 1964 from an architect and engineer who was general manager of the company that constructed, remodeled and maintained subject residence. He states that the company made substantial alterations in the original construction and estimates that the reproduction cost in 1960, including the cost of interior decoration by the firm of Jansen, Inc. of Paris and New York was \$282,152.00, not including the value of the land.

Claimant, HELENA J. HACKLEY states that she has a certified copy of an insurance policy covering the residence against fire for 80% of its value at \$147,600 which expired October 31, 1960.

Based on the entire record, the Commission finds that on the date of loss, the value of the residence including the improvements was \$210,000.

Household Furnishings

The record includes an appraisal by an official of Jansen, Inc. dated June 19, 1964 of the furniture and furnishings which are listed in detail. The Commission finds the evaluations on this list to be fair and reasonable and concludes that the contents of the residence had an aggregate value of \$353,628 on the date of loss.

Accordingly, the Commission finds that the aggregate value of the land, residence, and household furnishings was \$705,703.

As indicated above, 1/3 of the estate of claimant's father (or 1/6 of the whole) was encumbered with a life estate in favor of his widow who

according to the evidence of record was 61 years old at the time of loss on December 6, 1961. The value of the claimant's interest must therefore be determined.

The Commission has adopted as a basis for valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F. R. 4547, 26 C.F.R. 2031-7.) According to the method of valuation, a life estate in property so encumbered is valued at .38422 of the entire estate, and the remainder interest is valued at .61578 of the entire estate. Therefore, since the value of 1/6 of the property in question is \$117,617.17 the remainder is valued at \$72,426.30 which is .61578 of that amount.

Therefore, the Commission finds that claimant, HELENA J. HACKLEY's interest had a value of \$117,617.17 (1/6 of \$705,703) plus \$36,213.15 (1/2 of the remainder interest of \$72,426.30) for a total of \$153,830.32. The Commission therefore concludes that claimant, HELENA J. HACKLEY, suffered a loss in the total amount of \$153,830.32 as the result of the taking of her interest in subject real and personal property by the Government of Cuba.

Trans-Cuba Oil Co.

Based on the evidence of record including a copy of an affidavit by the president of the Company addressed to its permanent receiver in New York City and a copy of a United States Department of State Consular receipt, the Commission finds that claimant, HELENA J. HACKLEY, was the owner of 2,000 shares of stock in the Trans-Cuba Oil Co. Pursuant to the Community Property law of Cuba, her husband, SHERLOCK D. HACKLEY, a United States national since birth, owned a 1/2 interest in these shares of stock. Accordingly, SHERLOCK D. HACKLEY, is joined as claimant in this matter.

In our decision entitled the Claim of D. R. Wimberly (Claim No. CU-3417 which we incorporate herein by reference), we held that the

properties owned or controlled by the Company were nationalized or otherwise taken by the Government of Cuba on November 23, 1959, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$0.1198.

Since claimant, HELENA J. HACKLEY, did not become a national of the United States until March 10, 1960, after the date of taking by the Government of Cuba, so much of this portion of the claim as is based on her 1/2 interest therein is hereby denied.

Accordingly, the Commission finds that claimant, SHERLOCK D. HACKLEY, suffered a loss in the amount of \$119.80 within the meaning of the Act for his 1/2 interest in the 2000 shares of stock of Trans-Cuba Oil Company.

No additional evidence has been submitted with respect to the other portions of this claim, and their denial for failure of proof is affirmed.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
SHERLOCK D. HACKLEY	November 23, 1959	\$ 119.80
HELENA J. HACKLEY	December 6, 1961	153,830.32

It may be noted that upon receipt of additional evidence warranting a change in any part of the decision denying certain items of this claim, the Commission will reopen the matter provided however that such evidence is received by May 1, 1972 to permit consideration thereof prior to the close of the program on June 30, 1972.

In view of the foregoing, the following Certification of Loss will be entered and in all other respects the Proposed Decision, as amended herein, is affirmed.


CERTIFICATIONS OF LOSS

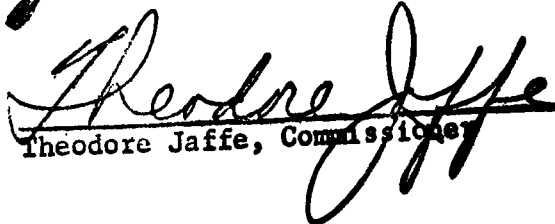
The Commission certifies that HELENA J. HACKLEY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Fifty-Three Thousand Eight Hundred Thirty Dollars and Thirty-Two Cents (\$153,830.32) with interest thereon at 6% per annum from December 6, 1961 to the date of settlement; and

The Commission certifies that SHERLOCK D. HACKLEY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Nineteen Dollars and Eighty Cents (\$119.80) with interest thereon at 6% per annum from November 23, 1959 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

OCT 14 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

HELENA J. HACKLEY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU - 2335

Decision No. CU 6168

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by HELENA J. HACKLEY for \$1,356,723.07 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimant has been a national of the United States since her naturalization on March 10, 1960.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" to mean "(A) a natural person who is a citizen of the United States." The term does not include aliens.

Thus, in order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established (1) that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking; and (2) that the claim arising as a result of such nationalization or other taking has been continuously owned thereafter in whole or in part by a national or nationals of the United States to the date of filing with the Commission.

Claimant has submitted a quantity of documentation. However, the major portion of this claim is based on the loss of a 1/3 interest in certain improved real and personal property including stock interests in certain Cuban corporations, which claimant inherited from her father, a Cuban national. Since the record establishes that claimant's father died on April 3, 1961 and that his real and personal property was either taken by the Government of Cuba before the date of his death or the date of taking has not been established by claimant, this portion of the claim is denied because it does not meet the requirements of Section 504 of the Act, supra.

The remaining portion of the claim is based on stock interests in a number of Cuban corporations, including the Trans-Cuba Company which claimant asserts she owned in her own right.

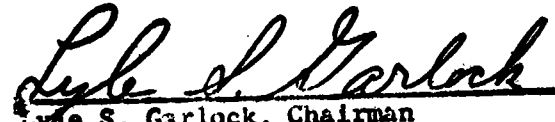
By Commission letter of September 3, 1969 it was suggested that claimant submit evidence to establish the extent of her stock interest in these corporations, as well as their value on the date of loss, and the United States nationality of her husband. The record includes some evidence of her ownership of certain stock interests in Cia. Azucarera Felicidad S.A., Cia. Agricola Dos Rios S.A., Cia. Agricola Luisiana S.A., Cia Mercantil Felicidad, S.A., and San Augustin Trust Co. but no balance sheets or similar financial evidence has been submitted to establish the value of claimant's loss on the date of taking. The record does include balance sheets for 1957 and earlier for Drogueria de Johnson but no evidence that claimant held an ownership interest therein. Similarly the record does not support an interest in claimant in Cia. Fiduciara Edificio Johnson, S.A. on the asserted date of loss.

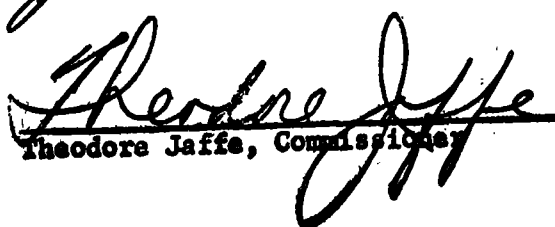
On October 30, 1969 she was informed that absent the suggested evidence it might become necessary to determine the claim on the basis of the existing record. After several grants of extensions no evidence has since been submitted. Moreover with regard to the portion of her asserted stock interests in the Trans-Cuba Company, the Commission has held that this company was taken by the Government of Cuba on November 23, 1959 which is prior to the date claimant became a United States national.

In view of the foregoing the Commission is constrained to deny this claim for the reasons stated above and because it finds that claimant has not met the burden of proof in that she has failed to establish ownership and value of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba subsequent to her acquisition of United States nationality. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 21 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended (1970).)